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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	CV95-2115
	§	**Civil Action No.** _____
Plaintiffs	§	**JUDGE** _____
	§	
v.	§	**MAGISTRATE** _____
	§	
ATLANTIC RICHFIELD COMPANY,	§	
	§	
Defendant	§	

ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT OF CRYSTAL OIL COMPANY AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY

Plaintiffs, Crystal Oil Company ("Crystal") and Crystal Exploration and Production Company ("CEPCO"), complain and allege against defendant Atlantic Richfield Company ("ARCO") as follows:

JURISDICTION AND VENUE

1. This action arises under federal question jurisdiction, 28 U.S.C. § 1331, and requires application of the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*

2. This action further arises under the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202 and under the Court's diversity jurisdiction established in 28 U.S.C. § 1332. As set forth in more detail below, the parties are diverse and the amount in controversy exceeds the sum of fifty thousand dollars ($50,000), exclusive of interests and costs.

(1) M

3. The venue of this action is proper in the Western District of Louisiana pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), in that venue is proper in any district in which the defendant may be found.

PARTIES

4. Plaintiff Crystal Oil Company is a corporation organized and existing under the laws of the state of Louisiana, with its principal place of business in Shreveport, Louisiana.

5. Plaintiff Crystal Exploration and Production Company is a corporation organized and existing under the laws of the state of Florida, with its principal place of business in Shreveport, Louisiana. CEPCO, a wholly-owned subsidiary of Crystal Oil Company, was formerly known as Charter Exploration and Production Company, and was an ongoing, wholly-owned subsidiary of Charter Oil Company when its stock was acquired by Crystal.

6. Defendant Atlantic Richfield Company is a corporation organized and existing under the laws of the state of Delaware, is registered to do business in the state of Louisiana, and does business in the Western District of Louisiana. Upon information and belief, ARCO's principal place of business is in Los Angeles, California. During some of the periods relevant to this Complaint, ARCO was a Pennsylvania corporation, but on May 7, 1985, ARCO's state of incorporation was changed to Delaware by a merger into a new Delaware corporation. ARCO is the direct successor by merger to The Anaconda Company ("Anaconda"). ARCO is a person within the meaning of Section 101(1) of CERCLA, 42 U.S.C. § 9601(21).

FACTS

7. This case arises out of a dispute regarding alleged liability under CERCLA, and possibly other environmental statutes, for the remediation of mining wastes associated with a mining area located in Rico, Colorado. While early mining activities in the Rico area concentrated on silver production, the primary mining activities have been for the production of lead and zinc, referred to as base metal ores. The primary owner and operator of the site from the early 1900s through 1973 was an entity known as the Rico-Argentine Mining Company.

8. Crystal-Rico Company, a Texas corporation and at the time a wholly-owned subsidiary of Crystal Oil Company, acquired Rico-Argentine Mining Company, an old Utah corporation, through a merger of such company into Crystal-Rico Company on July 3, 1974, and the name of Crystal-Rico Company was changed to Rico-Argentine Mining Company, which remained a Texas corporation. Rico-Argentine Mining Company was merged into CEPCO on January 1, 1977. CEPCO sold its Rico mining interests to Anaconda on August 27, 1980.

9. Crystal does not own and has never owned any mining interests or other property in or near Rico, Colorado, and it does not and has never conducted any mining or related operations there.

10. Upon information and belief, at the time of the sale of CEPCO's mining interests to Anaconda, Anaconda was a wholly-owned subsidiary of ARCO, then still a Pennsylvania corporation. On or about December 24, 1981, Anaconda was merged into the Pennsylvania corporation named Atlantic Richfield Company. On or about May 7, 1985, the said Pennsylvania corporation named Atlantic Richfield Company (for the

purpose of changing its state of incorporation to Delaware) was merged into the Atlantic Richfield Delaware Corporation and the name of the company was changed to Atlantic Richfield Company, the defendant herein.

11. In connection with the sale of the Rico mining interests to Anaconda in 1980, Anaconda, a subsidiary of ARCO, assumed all of the liabilities associated with the mining assets (except certain limited liabilities relating to certain wastewater treatment operations) that were transferred under the terms of the agreement between CEPCO and Anaconda. As the successor by merger to Anaconda, ARCO is responsible for any liabilities assumed by Anaconda under this agreement.

12. As set forth more fully hereinafter, on October 1, 1986, Crystal Oil Company filed a petition in the United States Bankruptcy Court, Western District of Louisiana, Shreveport Division (Case No. 586-02834), for reorganization under Chapter 11 of the Bankruptcy Code (11 U.S.C.). On December 31, 1986, such Bankruptcy Court entered an "Order Confirming Plan", which confirmed Crystal Oil Company's Plan of Reorganization, and discharged, satisfied and released Crystal Oil Company from all claims against, and interest in, Crystal Oil Company and any of its assets or properties not specifically provided for in its Plan of Organization and such Order.

13. ARCO has asserted that Crystal and CEPCO are liable under CERCLA for costs associated with the investigation and remediation of mill tailings associated with the former Rico mining operations and has requested that Crystal and CEPCO contribute costs towards these activities. ARCO has asserted that these costs will exceed $20,000,000.

14. Crystal and CEPCO deny liability for such costs.

15. Therefore, a substantial controversy presently exists between plaintiffs and defendant.

CLAIM FOR DECLARATORY JUDGMENT UNDER CONTRACT

16. On August 27, 1980, CEPCO sold to Anaconda certain of CEPCO's assets in Dolores County, Colorado, including the assets of Rico Argentine Mining Company, then operated as a division of CEPCO. This sale was memorialized in a Closing Agreement between the parties.

17. ARCO, as successor-by-merger to Anaconda, as a matter of corporate law assumed all of the obligations, liabilities, and responsibilities of Anaconda, including those assumed by Anaconda under the terms of the Closing Agreement.

18. The Closing Agreement establishes a division of environmental liabilities relating to the former mining operations. The Closing Agreement provided that CEPCO would not be liable for more than $30,000 in penalties or other costs associated with compliance with a National Pollution Discharge Elimination System ("NPDES") wastewater discharge permit issued to Rico Argentine Mining Company. The Closing Agreement provided in section 3(c) that "Anaconda shall be solely and fully responsible for any and all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or the EPA, including, without limitation, *clean-up orders or the installation of pollution control facilities, devices, plans or programs. In no event shall Crystal be liable for or subject to, either directly or indirectly, any such compliance costs.*" (Emphasis added.)

19. The Closing Agreement further provided, in the following provision, that all other liabilities associated with the mining activities were assumed by Anaconda:

> 12. Crystal and Anaconda agree, with respect to the following matters which may be pending or continuing subsequent to the closing of this transaction, that:
>
> d) Crystal shall not be subject to any other obligations or responsibilities with respect to the properties involved in this transaction subsequent to closing, except as otherwise specified in this Closing Agreement.

20. Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), provides that parties may contractually allocate liability for CERCLA costs. The Closing Agreement provides that all such liabilities were assumed by Anaconda and that Crystal would not be subject to any other obligations or responsibilities with respect to the sold properties. By reason of the merger between Anaconda and ARCO, ARCO now bears all such liabilities, obligations, and responsibilities and is therefore obligated to hold Crystal harmless from any such liabilities, obligations, and responsibilities.

21. An actual, substantial, legal controversy now exists between plaintiffs and defendant, and plaintiffs seek a judicial declaration of their rights and legal relations with defendant pursuant to 28 U.S.C. § 2201. Plaintiffs contend that under the terms of the Closing Agreement, as between plaintiffs and defendant, defendant fully assumed all of the liabilities associated with the operations of the mines, including any environmental liabilities that may arise under CERCLA or any other statute allowing for contribution of response costs associated with the remediation of the mining wastes.

22. A declaratory judgment is necessary to provide a resolution of the issues between the parties for the liability for such costs. Crystal and CEPCO are entitled

to a declaratory judgment that such liabilities were assumed by Anaconda under the terms of the Closing Agreement.

CLAIM FOR DECLARATORY JUDGMENT DUE TO DISCHARGE IN BANKRUPTCY

23. On October 1, 1986, Crystal Oil Company filed a petition initiating a case under chapter 11 of the Bankruptcy Code (the "Bankruptcy Case") in the United States Bankruptcy Court for the Western District of Louisiana in Shreveport, Louisiana (the "Bankruptcy Court"). Crystal Oil Company gave substantial notice through mailings and publication of the filing of that Bankruptcy Case and of the deadline for filing proofs of claim in that Bankruptcy Case. Among other places, the notice of these deadlines were published in the national edition of the Wall Street Journal. Further, ARCO had actual notice of the Bankruptcy Case as a creditor of Crystal Oil Company and filed a notice of appearance in the proceeding. Having filed a notice of appearance, ARCO received copies of all papers filed in the proceeding and distributed to creditors. Finally, ARCO was actually represented by attorneys in various hearings during the Bankruptcy Case.

24. On November 10, 1986, the Bankruptcy Court entered an Order approving Crystal Oil Company's Disclosure Statement for its Plan of Reorganization (the "Disclosure Statement Order"). The Disclosure Statement Order set the date for the hearing to consider whether Crystal Oil Company's Plan of Reorganization should be confirmed (the "Confirmation Hearing" and "Crystal's Plan of Reorganization") and the date by which any holder of a claim must object to that confirmation, if it chose to do so.

25. Crystal Oil Company gave substantial notice through mailings and publication of the date of the Confirmation Hearing and the date for filing any objections to its confirmation, which had been set in the Disclosure Statement order. Among other places, the notice of these deadlines was published in the national edition of the Wall Street Journal. ARCO, as a creditor having appeared in the case, received such notices and Disclosure Statement.

26. At the conclusion of this Confirmation Hearing, the Bankruptcy Court entered an order confirming Crystal Oil Company's Plan of Reorganization (the "Confirmation Order"). The Confirmation Order incorporated by reference the terms of Crystal Oil Company's Plan of Reorganization. Crystal Oil Company's Plan of Reorganization provided that, among others, all claims against Crystal Oil Company arising before the beginning of its Bankruptcy Case were discharged. The Plan of Reorganization was consummated on January 30, 1987.

27. Certain parties appealed the Plan Confirmation Order. This appeal was dismissed for mootness by the United States District Court for the Western District of Louisiana (which dismissal was affirmed by the United States Court of Appeals for the Fifth Circuit), and the time for rehearing or further appeal or certiorari of the Confirmation Order has expired. The Plan Confirmation Order has become a final order. The terms of the Confirmation Order and Crystal Oil Company's Plan of Reorganization, including its provision for discharge of claims, are res judicata as to all creditors who had notice of the confirmation hearing.

28. This Court has jurisdiction to construe and enforce the Confirmation Order that was entered by the United States Bankruptcy Court for Western District of

Louisiana confirming Crystal Oil Company's Plan of Reorganization, including the terms of Crystal Oil Company's Plan which were confirmed by that Order.

29. The claim currently being threatened by ARCO (the "Environmental Claim"), to the extent it constitutes a claim against Crystal Oil Company, constitutes a claim as defined in Crystal Oil Company's Plan of Reorganization and in the Bankruptcy Code. ARCO had adequate notice of the date by which any such claim needed to be filed in the Bankruptcy Case and the date for objecting to confirmation of Crystal Oil Company's Plan of Reorganization.

30. Notwithstanding this adequate notice of the date for filing proofs of claim in Crystal Oil Company's Bankruptcy Case and the date for objection to confirmation of Crystal's Plan of Reorganization, ARCO did not file any claim in respect of the Environmental Claim in Crystal Oil Company's Bankruptcy Case or make any objection to confirmation of Crystal's Plan of Reorganization, which included the discharge of all claims arising before the Bankruptcy Case.

31. The Environmental Claim was discharged as to ARCO pursuant to the terms of: (i) the Confirmation Order, (ii) Crystal's Plan of Reorganization and (iii) the Bankruptcy Code. As a result, ARCO's pursuit of the Environmental Claim is in violation of § 10.02 of the Plan and § 1141 of the Bankruptcy Code, enjoining prosecution of such claims against Crystal Oil Company.

32. A declaratory judgment is necessary to provide a resolution of the issues between the parties for the liability for the Environmental Claim. Crystal is entitled to a declaratory judgment that any such liabilities were discharged pursuant to terms

of: (i) the Confirmation Order, (ii) Crystal's Plan of Reorganization and (iii) the Bankruptcy Code.

PRAYER

Plaintiffs Crystal Oil Company and Crystal Exploration and Production Company respectfully request that the Court award the following relief:

(a) A judgment declaring that all liabilities arising under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, or any other applicable federal or state law, were assumed by Anaconda under the terms of the Closing Agreement, and that neither CEPCO nor Crystal Oil Company is responsible therefor;

(b) A judgment declaring that all environmental liabilities relating to the subject mining properties, except as to the $30,000 in penalties and costs relating to permit exceedences in connection with the NPDES permit, were assumed by Anaconda under the terms of the Closing Agreement;

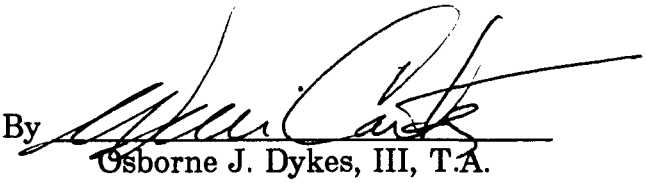
(c) A judgment declaring that any such environmental liabilities that were assumed by Anaconda were subsequently assumed by ARCO by virtue of the merger of Anaconda into ARCO;

(d) A judgment declaring that as to Crystal Oil Company, any Environmental Claim that ARCO may have against Crystal Oil Company under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, or any other applicable federal or state law, was discharged pursuant to terms of: (i) the Confirmation Order, (ii) Crystal's Plan of Reorganization and (iii) the Bankruptcy Code; and

(d) All other relief, both general and special, at law or in equity, to which plaintiffs may show themselves justly entitled.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By 

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	CV95-2115 S
Plaintiffs	§	JUDGE
v.	§	MAGISTRATE MAGISTRATE JUDGE PAYNE
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: Atlantic Richfield Company through its registered agent for service, CT Corporation System, 8550 United Plaza Blvd., Baton Rouge, Lousiana 70809

A lawsuit has been commenced against the entity on whose behalf you are addressed. A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Western District of Louisiana and has been assigned docket number _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the wavier within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the wavier is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent.

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require the party on whose behalf you are addressed to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, 1995.

_____
Osborne J. Dykes, III

Attorney for Crystal Oil Company and Crystal Exploration and Production

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	Civil Action No. CV95-2115
Plaintiffs	§	JUDGE JUDGE STAGG
v.	§	MAGISTRATE
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

WAIVER OF SERVICE OF SUMMONS

TO: Mr. Osborne J. Dykes, III, Fulbright & Jaworski L.L.P., 1301 McKinney, Suite 5100, Houston, Texas 77010-3095.

I acknowledge receipt of your request that I waive service of a summons in the above-styled action. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed wavier to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that Atlantic Richfield Company be served with judicial process in the manner provided by Rule 4.

I understand that a judgment may be entered against Atlantic Richfield Company Corporation if an answer or motion under rule 12 is not served upon you within 60 days after November 30, 1995.

_____ _____
DATE SIGNATURE

_____
PRINTED NAME/TITLE

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the compliant is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or its property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the wavier form serve on the plaintiff's attorney a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for wavier of service was received.